



STATE OF CONNECTICUT
DEPARTMENT OF BANKING
260 CONSTITUTION PLAZA – HARTFORD, CT 06103-1800



TESTIMONY SUBMITTED TO THE AGING COMMITTEE

Jorge L. Perez, Commissioner

March 3, 2016

***SB 265 – An Act Concerning The Protection Of Consumers Who Receive Investment Advice
From Financial Advisors***

Chairman Flexer, Chairman Serra, Ranking Members Kelly and Bolinsky, and members of the Committee. My name is Jorge L. Perez and I am the Commissioner of the Department of Banking. Thank you for the opportunity to submit this testimony regarding Senate Bill 265, An Act Concerning the Protection of Consumers Who Receive Investment Advice from Financial Advisors.

The Department of Banking applauds the thoughtful efforts of the committee to provide greater protections for consumers of financial services, who deserve nothing less than to have confidence in their financial advisors. Unfortunately, this bill may create unintended consequences on state or federally registered Investment Advisors.

As discussed below, many of the specific requirements contained in this bill would impose on financial advisers requirements that are already in place under current state and federal law.

Investment advisers, who are regulated by the DOB and the Securities Exchange Commission already have a fiduciary duty to act in the best interests of their clients. (See, e.g., *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963)). Thus, there is no need to impose an additional fiduciary obligation on investment advisers.

Section 36b-31-5c of the Regulations under the Connecticut Uniform Securities Act (CUSA) require state-regulated investment advisers to provide periodic written disclosures to advisory clients. In addition, the CUSA Regulations describe dishonest or unethical business practices by investment advisers that would support the Department of Banking taking administrative enforcement sanctions. These include:

- Misrepresentation of qualifications to any client or prospective client, representative or employee of the investment adviser;
- Misrepresentation of the nature of the advisory services being offered;
- Misrepresenting the fees to be charged for such services;
- Or even failing to state a material fact necessary for the Investment Advisor to make the statements made to the client regarding qualifications, services or fees, in light of the circumstances under which they are made, would be considered misleading (Section 36b-31-15c(a)(8)) and subject to enforcement action.

The CUSA Regulations also require that advisory contracts be in writing. These contracts must disclose to clients:

- services to be provided;
- term of the contract;
- advisory fee along with the formula for computing the fee;
- amount and the manner of calculating the amount of prepaid fees to be returned in the event of contract termination or nonperformance;
- whether the investment adviser would have discretionary power; and
- that the investment adviser shall not assign the contract without the consent of the other party to the contract (Section 36b-31-15c(a)(15)).

Given the fact that Connecticut investors are already protected by the above-mentioned current regulations, there is no need to include Investment Advisors in S.B. 265.

Another concern that deserves deeper thought is whether federal law may preempt parts of S.B. 265. To the extent the bill attempts to regulate *SEC*-registered investment advisers, it may run afoul of Section 203a of the Investment Advisers Act of 1940, which preempts state laws requiring "registration, licensing, or qualification as an investment adviser . . ." While there are other intricacies involved, practically speaking, this preemptive provision prohibits a state from imposing qualification requirements on *SEC*-registered investment advisers (one who renders investment advice on securities for compensation.)

The Department of Banking would respectfully request that some terms be further defined regarding which individuals are subject to the bill. For example, it is uncertain whether residential real estate appraisers, those in the business of appraising collectibles such as coins, stamps, and memorabilia, or whether business management consultants who may give valuation advice on the purchase or sale of businesses that are otherwise unrelated to the securities industry, would be subject to the bill's proscriptions. Additionally the term "investor" is not defined, which would create ambiguity concerning precisely who this bill seeks to protect. Because the term "Investment advice" is also undefined, it is uncertain whether such advice must be securities-related or whether it relates to other areas such as insurance and commodities.

Finally, the Department notes that Connecticut courts have been hesitant to apply CUTPA to securities transactions.

Please do not hesitate to contact me if the Department can be of any assistance.